

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF HUMBOLDT**825 Fifth Street, Room 231
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Post-It® Fax Note		7671		Date	# of pages
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September 13, 2005

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FROM: W. Bruce Watson, Judge of the Superior Court

TOTAL NUMBER OF PAGES INCLUDING COVER PAGE: 11

FILED**SEP 13 2005** *WJR*SUPERIOR COURT OF CALIFORNIA
COUNTY OF HUMBOLDT**SUPERIOR COURT OF CALIFORNIA, COUNTY OF HUMBOLDT**THE PACIFIC LUMBER COMPANY and
SCOTIA PACIFIC COMPANY LLC,

CASE NO: CV050674

Petitioners and Plaintiffs,

vs.

NORTH COAST REGIONAL WATER
QUALITY CONTROL BOARD and DOES
1 through 20,

Respondents and Defendants.

FRESHWATER CREEK AND ELK RIVER
WATERSHEDS LAND, RANCH AND
PROPERTY OWNERS, RESIDENTS AND
MANAGERS ("OWNERS")

CASE NO: CV050675

Petitioners and Plaintiffs,

**RULING ON:
PLAINTIFFS/PETITIONERS'
APPLICATION FOR
TEMPORARY RESTRAINING
ORDER (Filed 9/9/05) and
ORDERS THEREON**

vs.

NORTH COAST REGIONAL WATER
QUALITY CONTROL BOARD, and
DOES 1 through 20,

Respondents and Defendants.

RULING CV050674 & CV050675 lwgf

**RULING ON: PLAINTIFFS/PETITIONERS' APPLICATION
FOR TEMPORARY RESTRAINING ORDER (Filed 9/9/2005)
and ORDERS THEREON**

SEP-13-2005 17:59

CARTER, BEHNKE, OGLESBY

7074627839 P.03/11

1 Plaintiffs/Petitioners filed, September 9, 2005, application for temporary
2 restraining orders ("TRO's") as to Defendants/Respondents in two separate
3 proceedings consolidated for hearing. Plaintiffs' request a TRO, and an order to show
4 cause ("OSC") on a preliminary injunction, to immediately enjoin Defendants from taking
5 further action or holding further hearings on Resolution Nos. RI-2005-0064, RI-2005-
6 0065, RI-2005-0066, and RI-2005-0067 pending a court hearing on the merits of
7 Plaintiffs' Petition and Complaint.

8
9 A court may issue a TRO/preliminary injunction to preserve the status quo until a
10 final determination of the merits of the action. (*Nutro Prods. V. Cole Grain Co.* (1992) 3
11 Cal.App.4th 880, 865.

12 In granting or denying a preliminary injunction, a court does not adjudicate the
13 parties' rights in the proceeding, rather the court determines whether a defendant
14 should be restrained from exercising a claimed right pending a trial on the merits.
15 (*Robbins v. Sup. Ct.* (1985) 38 Cal.3 199, 206; *Tahoe Keys Prop. Owners' Ass'n. v. State Water*
16 *Resources Control Bd.* (1994) 23 Cal.App.4th 1459, 1466).

17 Code of Civil Procedure §526(a) states the grounds upon which an injunction
18 may issue, which includes, a showing of great or irreparable harm to the Plaintiff.

19
20 In the proceedings we have an Owners Association and PALCO requesting a
21 TRO/OSC to prevent the North Coast Regional Water Quality Control Board from
22 holding public hearings on September 14th and 15th, 2005, tomorrow and the following
23 day.

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RULING ON: PLAINTIFFS/PETITIONERS' APPLICATION
FOR TEMPORARY RESTRAINING ORDER (Filed 9/9/2005)
and ORDERS THEREON

SEP-13-2005 17:59

CARTER, BEHNKE, OGLESBY

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1 Plaintiff Owners argue that they in particular are being denied due process by
2 being excluded as parties to the hearings. Plaintiff Owners argue in essence they were
3 denied fair notice of the opportunity to apply for party status.

4 PALCO argues that after the issue of WWDRs for Elk River and Freshwater have
5 been pending for one and a half years that Defendant has unnecessarily shortened the
6 time period for consideration of public comments to the detriment of PALCO. PALCO
7 stating:

8 "Stopping the Regional Water Board does only one thing – allow
9 the necessary time for an informed decision based on science and in
10 accordance with the law. A temporary restraining order will not allow
11 PALCO to harvest, it will not cause impacts to the environment, and it will
12 not violate any statutory deadlines." (PALCO's Ex Parte Application For
13 TRO and OSC Re: Preliminary Injunction, p. 6, filed 9/9/05).

14 The Court will grant Plaintiffs' request for a TRO and OSC.

15 Dated: September 13, 2005

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17 W. Bruce Watson, Judge
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RULING ON: PLAINTIFFS/PETITIONERS' APPLICATION
FOR TEMPORARY RESTRAINING ORDER (Filed 9/9/2005)
and ORDERS THEREON

SEP-13-2005 18:00

Frank Shaw Bacik
CARTER, BEHNKE, OGLESBY

707-441-1087
7074627839 P.03/11 P.5

ATTACHMENT A

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THE PACIFIC LUMBER COMPANY AND SCOTIA
PACIFIC COMPANY LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF HUMBOLDT

THE PACIFIC LUMBER COMPANY and SCOTIA
PACIFIC COMPANY LLC,

Plaintiffs/Petitioners,

v.

NORTH COAST REGIONAL WATER QUALITY
CONTROL BOARD, and DOES 1 through 20,

Defendants/Respondents.

Case No. **CV 050674**

**[PROPOSED] TEMPORARY
RESTRAINING ORDER AND
ORDER TO SHOW CAUSE**

Date Action Filed: 09/09/05
Trial Date: TBD

TO RESPONDENT/DEFENDANT NORTH COAST REGIONAL WATER QUALITY CONTROL
BOARD:

Based on the Application for Temporary Restraining Order and Order to Show Cause of
Petitioners/Plaintiffs PACIFIC LUMBER COMPANY and SCOTIA PACIFIC COMPANY LLC
(collectively "PALCO") and its Petition and Complaint, the Declaration of William M. Sloan in
Support of Application For Temporary Restraining Order, Memorandum of Points and Authorities
and the oral arguments of counsel.

st-1997115

Case No.

[PROPOSED] TEMPORARY RESTRAINING ORDER & ORDER TO SHOW CAUSE

YOU AND EACH OF YOU ARE HEREBY ORDERED TO SHOW CAUSE at 8⁴⁵ AM before the
 and counsel may be heard in Department 4 of the m

October 5, 2005, or as soon thereafter as counsel may be heard in Department 4 of the above entitled Court, why you, your agents, servants, assigns and all those acting in concert with you, should not be restrained and enjoined pending trial of this action from taking any further action or holding any further hearings on Resolution Nos. R1-2005-0064, R1-2005-0065, R1-2005-0066, and R1-2005-0067.

R1-2005-0067.
PENDING HEARING on the above Order to Show Cause, you, your agents, servants,
assigns, and all those acting in concert with you, **ARE HEREBY RESTRAINED AND ENJOINED**
from taking any further action or holding any further hearings on Resolution Nos. R1-2005-0064, R1-
2005-0065, R1-2005-0066, and R1-2005-0067.
This is effective on September 19, 2005.

The above temporary restraining order is effective on September 19, 2005.

The above temporary restraining order is effective on September 19, 2005.

This Order to Show Cause and supporting papers shall be served on Respondent/Defendant North Coast Regional Water Quality Control Board no later than September 19, 2005. Proof of such service shall be filed and delivered in the manner provided by California Code of Civil Procedure section 527.

The following briefing schedule shall apply:

- The following briefing schedule shall apply:
- Any opposition papers to the OSC shall be filed and served on Petition/Plaintiff no later than ^{4pm} ~~Sept 27~~ 27, 2005.
 - Any reply papers to such opposition shall be filed and served on Respondent/Defendant no later than ^{4pm} ~~October 3~~ October 3, 2005.

- Any reply papers to such opposition shall be filed and served on Respondent/Defendant no later than ^{4pm} October 3, 2005.

IT IS SO ORDERED.

Dated: 10/12, 2005

JUDGE OF THE SUPERIOR COURT

Frank Shaw Bacik

707-441-1087

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P.08/11

P.8

SEP-13-2005 18:00

CARTER, BEHNKE, OGLESBY

707-441-1087

ATTACHMENT B

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8 Attorneys for Plaintiffs/Petitioners
9 FRESHWATER CREEK AND ELK RIVER WATERSHEDS
10 LAND, RANCH AND PROPERTY OWNERS, RESIDENTS
11 AND MANAGERS ("OWNERS")

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF HUMBOLDT

14 FRESHWATER CREEK AND ELK RIVER
15 WATERSHEDS LAND, RANCH AND PROPERTY
16 OWNERS, RESIDENTS AND MANAGERS
17 ("OWNERS")

18 Plaintiffs/Petitioners,

19 v.

20 NORTH COAST REGIONAL WATER QUALITY
21 CONTROL BOARD, and DOES 1 through 20,

22 Defendants/Respondents.

Case No. CV 050675

TEMPORARY RESTRAINING
ORDER AND ORDER TO
SHOW CAUSE

Date Action Filed: 09/09/05
Trial Date: TBD

23 TO: RESPONDENT/DEFENDANT NORTH COAST REGIONAL WATER QUALITY
24 CONTROL BOARD:

25 Based on the Application for Temporary Restraining Order and Order to Show Cause of
26 Petitioners/Plaintiffs FRESHWATER CREEK AND ELK RIVER WATERSHEDS LAND, RANCH
27 AND PROPERTY OWNERS, RESIDENTS AND MANAGERS ("OWNERS") and its Petition and
28 Complaint, Declaration of Frank Shaw Bacik in Support of Application for Temporary Restraining
Order and other Relief, the Memorandum of Points and Authorities and the arguments of counsel:

OWNERS' EX PARTE APPLICATION FOR TRO, ETC.

YOU AND EACH OF YOU ARE HEREBY ORDER TO SHOW CAUSE on

October 5, 2005, at **8:45 a.m.** or as soon thereafter as counsel may be heard in Department **4** of the above-entitled Court, why you, your agents, servants, assigns and all those acting in concert with you, should not be restrained and enjoined pending trial of this action from taking any further action or holding any further hearings on Resolution Nos. R1-2005-0064, R1-2005-0065, R1-2005-0066, and R1-2005-0067.

PENDING HEARING on the above Order to Show Cause, you, your agents, servants, assigns, and all those acting in concert with you, **ARE HEREBY RESTRAINED AND ENJOINED** from taking any further action or holding any further hearings on Resolution Nos. R1-2005-0064, R1-2005-0065, R1-2005-0066, and R1-2005-0067.

The above Temporary Restraining Order is effective on September **13**, 2005.

This Order to Show Cause and supporting papers shall be served on Respondent/Defendant North Coast Regional Water Quality Control Board no later than September **19**, 2005. Proof of such service shall be filed and delivered in the manner provided by CCP §527.

The following briefing schedule shall apply:

- Any opposition papers to the Order to Show Cause shall be filed and served on Petitioner/Plaintiff no later than **4pm** **Sept 27**, 2005.
- Any reply papers to such opposition shall be filed and served on Respondent/Defendant no later than **4pm** **October 3**, 2005.

IT IS SO ORDERED.

Dated: September **13**, 2005


JUDGE OF THE SUPERIOR COURT